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6 || Attorneys for Plaintiff

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

1 MARY MARCELJA, Individually, as)
2 Wrongful Death Heir, and as Successor-in-)
3 Interest to RICHARD MARCELJA,)
4 Deceased; TIMOTHY MARCELJA,)
5 THEODORE MARCELJA, ANTHONY)
6 MARCELJA, as Legal Heirs of RICHARD)
7 MARCELJA, Deceased,)
8 Plaintiffs,)
9 vs.)
10 GENERAL ELECTRIC COMPANY, and)
11 DOES 1-300,)
12 Defendants,)
13 RICHARD MARCELJA, JR.)
14
15 Defendant heir.
16
17 No. 06-7109-SI
18 JOINT MOTION AND STIPULATION TO
19 STAY PROCEEDING OR, IN THE
20 ALTERNATIVE, TO CONTINUE CASE
21 MANAGEMENT DEADLINE AND
22 CONFERENCE, AND TO EXTEND TIME;
23 [PROPOSED] ORDER TO STAY;
24 [PROPOSED ALTERNATIVE] ORDER
25 TO CONTINUE

23 Pursuant to Civil L. R. 7-11 and 7-12, the following parties hereby stipulate to, and
24 respectfully move the Court for, an Order extending time as set forth in the *Case Management*
25 *Scheduling Order* filed November 16, 2006 (Document 2), for the following good cause:
26 On December 21, 2006, Defendant GENERAL ELECTRIC COMPANY, filed Document
27 5, a Notice to Tag Along Action regarding the pending Multidistrict Litigation (“MDL”) in the
28 Eastern District of Pennsylvania, seeking among other things, to move Jurisdiction of this matter

1 to that District. Said Defendants subsequently mailed notice to the Judicial Panel on
 2 Multidistrict Litigation (“JPML”) pursuant to 28 U.S.C. § 1407.

3 On July 29, 1991, the JPML entered an order transferring all asbestos personal injury
 4 cases pending in the federal courts to the United States District Court for the Eastern District of
 5 Pennsylvania, for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407. That order also
 6 applies to “tag-along actions,” or actions involving common questions of fact filed after January
 7 17, 1991. Such actions are to be transferred to the eastern District of Pennsylvania as part of
 8 MDL 875, for coordinated pretrial proceedings.

9 The JPML has held that a district court has the authority to stay pending a transfer order.
 10 *In re Asbestos Products Liability Litigation*, 170 F. Supp. 2d 1348, 1349 n.1 (J.P.M.L. 2001)
 11 (“[T]hose courts concluding that such issues should be addressed by the transferee judge need
 12 not rule on them, and the process of 1407 transfer in MDL-875 can continue without any
 13 unnecessary interruption or delay.”)

14 The parties agree that it is likely that the JPML will transfer this matter to the Eastern
 15 District of Pennsylvania.

16 However, to date, the Clerk of the JPML has not entered a *Conditional Transfer Order*
 17 pursuant to JPML Rule 12(a) or filed an order to show cause why the action should not be
 18 transferred, pursuant to JPML Rule 13(b).

19 It is likely the dates set forth in the *Case Management Scheduling Order* including the
 20 deadlines imposed by Federal Rules of Civil Procedure 26, will come to pass before the Clerk of
 21 the JPML acts.

22 The parties make this Motion on the grounds that a stay of this action would (a) promote
 23 judicial efficiency, (b) allow consistency in pretrial rulings, and (c) be most convenient to the
 24 parties.

25 Due to the pending action by the Clerk of the JPML, the parties hereby STIPULATE to
 26 and respectfully request the Court VACATE its *Case Management Scheduling Order*, and that
 27 the Court issue an Order STAYING this action pending the outcome of the MDL Panel’s
 28 decision on the merits of the transfer.

In the alternative, the parties hereby STIPULATE to and respectfully request that the dates set forth in the *Case Management Scheduling Order* (Document 2) be vacated and continued pending the outcome of the JPML's decision on the merits of the transfer. Specifically, these deadlines in this matter include the **February 2, 2007** Rule 26 deadline to meet and confer, and file Joint ADR Certification, the **February 16, 2007** Deadline to complete Initial Disclosures, the **February 16, 2007** deadline to file the Joint Case Management Statement and the Case Management Conference currently set for **February 23, 2007**.

8 | Dated: December 22, 2006

BRAYTON PURCELL LLP

/s/ David R. Donadio

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By: _____

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Dated: December 22, 2006

**SEDGWICK, DETERT, MORAN &
ARNOLD, LLP**

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/s/ Derek Johnson

Derek Johnson
Attorneys for Defendant
GENERAL ELECTRIC COMPANY

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[PROPOSED] ORDER TO STAY

IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Case Management Scheduling Order* filed November 16, 2006 (Document 2), are hereby VACATED and that this action is STAYED pending the outcome of the JPML's decision on the merits of the transfer.

|| Dated:


Susan Illston
United States District Court Judge

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1 [PROPOSED ALTERNATIVE] **ORDER TO CONTINUE**

2 IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Case*
3 *Management Scheduling Order* filed November 16, 2006 (Document 2), are hereby VACATED.

4 IT IS FURTHER ORDERED that the following case management deadlines are
5 continued as follows:

6 1. Last day to meet and confer re initial disclosures, early settlement, ADR process
7 selection, and discovery plan is [set for a date on or after July 10, 2007 to wit:]

8 _____, 2007;

9 2. Last day to file Joint ADR Certification with Stipulation to ADR process or
10 Notice of Need for ADR Phone Conference is [set for a date after July 10, 2007 to wit:]

11 _____, 2007;

12 3. Last day to complete initial disclosures or state objection to Rule 26(f) Report,
13 file/serve Case Management Statement and file/serve Rule 26(f) Report is [set for a date after
14 July 10, 2007 to wit:] _____, 2007; and,

15 4. The Case Management Conference is [set for a date after July 10, 2007 to wit:]
16 _____, 2007 at 2:00 pm, Courtroom 10, 19th Floor, 450 Golden Gate Avenue,
17 San Francisco, California.

18 Dated: _____

19
20 Susan Illston
21 United States District Court Judge
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